

JAMES M. CHUDNOW

IBLA 80-236

Decided May 13, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-70317.

Reversed.

1. Oil and Gas Leases: Applications: 640-acre Limitation -- Words and Phrases

"Rule of Approximation." The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing, the offer thereby conforming to the rule of approximation.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On December 18, 1979, the Wyoming State Office, Bureau of Land Management (BLM), rejected oil and gas lease offer W-70317 for the reason the offer was for a total of less than 640 acres of available land and was not within the exceptions contained in 43 CFR 3110.1-3(a). Oil and gas lease offer W-70317 included 639.88 acres.

It has been determined that the Department will issue a lease for less than 640 acres under the "rule of approximation" as set forth in Natalie Z. Shell, 62 I.D. 417, 422 (1955), and more recently followed in J. W. Bloom, 24 IBLA 276 (1976), and Kenneth D. Kirkland, 18 IBLA 349 (1975).

[1] The rule of approximation holds that an oil and gas lease may be issued in response to an offer for less than 640 acres, all else being regular, where the amount by which the offer is less than 640 acres is smaller than the amount by which inclusion of the smallest adjoining legal subdivision available for leasing would put the offer in excess of 640 acres.

Appellant's offer to lease the following described lands in Fremont County, Wyoming, was filed on December 13, 1979:

T. 31 N., R. 91 W., 6th Prin. Mer.  
Section 6: Lot 4

T. 32 N., R. 91 W., 6th Prin. Mer.  
Section 31: Lots 1, 2, 3, 4

T. 31 N., R. 92 W., 6th Prin. Mer.  
Section 1: Lots 1, 2  
2: Lots 1, 2, 3, 4  
3: Lots 1, 2, 3, 4, SW 1/4 NW 1/4

The oil and gas plats for the townships involved shows the smallest adjoining legal subdivision available for leasing to be lot 6, sec. 5, T. 31 N., R. 91 W., containing 35.67 acres. To require appellant to include this lot in his offer would result in an offer for 675.55 acres, 35.55 acres in excess of the regulatory minimum of 640. The offer, as filed originally, encompassed an area of 639.88 acres, only 0.12 acres less than 640.

Kenneth D. Kirkland, *supra*, states:

In Shell, the Department concluded that it was consistent with the oil and gas lease offer form and the regulations to apply the administrative "rule of approximation" to oil and gas lease offers containing less than 640 acres. Although the Department has changed the applicable regulations several times since Shell, the changes have not been substantive. 1/ The lease offer form, in pertinent part, remains unchanged. Because of the sound policy reasons expressed in Natalie Z. Shell, *supra*, we adhere to the rule in that case. Union Oil Co., A-29725 (September 17, 1963). [Footnote omitted.]

Applying the rule of approximation to the present case, we find that the amount by which lease offer W-70317 is under 640 acres is less than the amount by which the inclusion of the 35.67 acre subdivision would put the offer in excess of 640 acres. Accordingly we conclude that BLM erred in rejecting lease offer W-70317. J. W. Bloom, *supra*; Kenneth D. Kirkland, *supra*; Natalie Z. Shell, *supra* at 422.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for action consistent with this decision.

Edward W. Stuebing  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joan B. Thompson  
Administrative Judge

